

ADMISSIBILITY OF EVIDENCE RELATING TO MILITARY AIRCRAFT ACCIDENT INVESTIGATIONS

JUNE 25, 1956.—Referred to the House Calendar and ordered to be printed

Mr. WILLIS, from the Committee on the Judiciary submitted the following

REPORT

[To accompany H. R. 6805]

The Committee on the Judiciary to whom was referred the bill (H. R. 6805) to prohibit in any lawsuit or action for damages the use and admission as evidence of investigations by the military departments of aircraft accidents conducted in the interest of air safety, having considered the same, report favorably thereon with amendment and recommend that the bill do pass.

The amendment is as follows:

On page 1, line 10, at the end thereof, add the following new section:

SEC. 2. In addition to any investigation conducted in the interest of safety in air navigation, the Secretary of the military department concerned, under regulations prescribed by him, shall require an investigation into the causes and circumstances of all accidents involving military aircraft resulting in an estimated damage of more than \$10,000 to private property not on the aircraft, or the death or injury of—

(1) a person not a member of the Armed Forces, except a person whose death or injuries are compensable under the Federal Employees' Compensation Act; or

(2) a member of the Armed Forces who at the time of the accident was not a passenger in the aircraft, was not on a military reservation, and was not performing military duties at the time of the accident.

Any part of this investigation or record or report thereof may be used in any suit or action for damages growing out of any matter mentioned in such investigation, or record or report thereof.

EXPLANATION OF AMENDMENT

The bill, as introduced, provides for investigations of aircraft accidents by military departments conducted in the interest of air safety. No part of the record of any such investigation will be admissible in a court of law. The proposed amendment expressly provides for a further or collateral investigation into the causes and circumstances of accidents involving military aircraft. Any part of the record, as a result of this investigation, may be used in a suit for damages.

PURPOSE

The purpose of this legislation is to prohibit in any lawsuit or action for damages the use and admission as evidence of investigations by the military departments of aircraft accidents involving military aircraft, conducted in the interest of safety in air navigation. Air-safety investigations are conducted in such a manner as to persuade the individuals involved to make full and accurate disclosure of all knowledge relevant to the inquiry which they may possess, even though disclosure of some of the information may be embarrassing to the individuals, and involve self-incrimination. Such full and free disclosure, however, is essential to the success of these investigations and to future air safety. In order to achieve this desired freedom of disclosure, it is deemed essential that assurance be given to these individuals that the statements which they may make will not and cannot be used later in civil court actions.

GENERAL STATEMENT

Military commanders always have had a prime interest in the safety of aircrews and aircraft, not only from the strictly humanitarian point of view, but also the very practical military reason that crashed airplanes and dead aircrews can never defend the United States or carry the battle to the enemy. Aircraft accidents usually occur as an unfortunate result of a series of events. When correction of conditions that lead to each accident or series of similar accidents is made, the accident potential is removed, and recurrence is not likely. Therefore, a reliable, authoritative, detailed knowledge of the facts and opinions that surround accidents is a strong tool to use in their prevention. Indeed, without such knowledge prevention efforts would be little better than guesswork.

Nothing is more fundamental to accident prevention than the work of investigating teams or boards. Such teams or boards who investigate aircraft accidents in the interest of air safety are not military courts-martial attempting to fix blame. Rather, they are researchers, seeking to uncover every fact and opinion about the accident; however minor. Their work is painstaking and thorough. It is a difficult assignment, but its successful accomplishment makes an important contribution to the saving of human lives and expensive aircraft.

It is only by the discovery of the cause factors of aircraft accidents made through investigations that timely action can be taken to prevent recurrence. Investigations and analyses of all the facts into known or suspected conditions pertaining to accidents are essential to the determination of their causes. Experience over the years has shown that complete and detailed investigations either disclose factors

theretofore unknown, or cause factors substantiating facts previously suspected, thus aiding in the identification of accident trends, dangerous problem areas, and accident potential conditions. In order to insure the continued acquisition of such vital knowledge, the military departments have promulgated regulations which specifically provide that reports of aircraft accident safety investigations cannot be used as evidence against witnesses who testified for the investigators, in any disciplinary action or in any determination of pecuniary liability or line-of-duty status. The purpose of these restrictions on the use of evidence is threefold: (1) To expedite the complete disclosure of all and any information that may prevent the loss of other aircraft and lives, (2) to protect the witnesses who, without regard to their legal rights and safeguards, disclose all they know or suspect in the interest of expeditious preventive action, and (3) to encourage investigators to arrive at prompt and definite conclusions and recommendations for corrective action from which the military flying operations can be made more efficient and effective.

According to the testimony at the hearings, witnesses generally are sincerely interested in accident-prevention purposes. Compelling reasons of personal security and personal interest, however, may deter their frank disclosure of facts or opinions relevant to the causes of an accident. Fears of punishment, pecuniary liability, or loss of professional standing, can inhibit a witness in making statements to investigators. It may be because of his fear of "becoming involved," that a witness will fail to come forward and volunteer information. Admissions, confessions, and other statements against interest often supply the only conclusive evidence in the determination of specific accident causes. If statements of this kind are to be obtained, witnesses must be induced to relinquish rights and safeguards on which they could ordinarily rely. The provisions of section 1 of this bill, which provide that their testimony given in air-safety investigations will be used only for accident-prevention purposes, present that inducement. In addition, it is often necessary to elicit statements from people highly trained in technical matters, and quite often vital technical information can be obtained only after a pledge is given not to disclose the source of the information. For example, the vast knowledge of the technical representatives of the aircraft manufacturers whose products are involved in an accident is often used by the military departments in aircraft-accident investigations. These representatives could hardly be expected to volunteer information prejudicial to their companies, if their reports could later be made public through testimony in court.

Although military aircraft air safety investigation reports are presently treated as classified information, and are adequately protected from use by the military departments as evidence, there is no certainty that they cannot be subpoenaed or ordered produced for inspection in actions for damages in courts of law. Military aircraft accidents occasionally result in civil suits for damages under the Federal Tort Claims Act (28 U. S. C. 1346 b, 2671-80). Usually plaintiffs claiming damages for death, personal injury, or injury to personal or real property seek to obtain through discovery under Federal Rules of Civil Procedure the report of the Aircraft accident investigation (rule 37). If the defendant, the United States, refuses to produce the report, the court may deny the Government the privilege of introducing evidence in defense of an allegation of

negligence (rule 37). Generally, when the plaintiff seeks to obtain an aircraft accident investigation report or any part thereof, the United States faces the alternative of: (1) breaking its pledge to witnesses in the investigation not to use their testimony except for purposes of accident prevention; or (2) risking an adverse judgment without an opportunity to have the case tried on its merits.

The bill, as amended, prohibits the use only of air safety accident investigation reports for litigation purposes. Other sources of evidence pertaining to the cause of an accident, especially as provided by section 2 of the instant legislation, will be available to litigants in actions arising from military aircraft accidents. Enactment of this bill will not, therefore, result in undue hardship or injustice for any litigant, and will not controvert the intent and purpose of the Federal Tort Claims Act.

The point of difference between an air-safety investigation conducted pursuant to section 1 of the bill for accident prevention, and the collateral investigation conducted pursuant to section 2 into the causes and circumstances of the same accident, is that the purpose of the collateral investigation is to ascertain all known facts. Opinions, conjectures, speculations, and conclusions are not its primary purposes. In addition, any and all of the witnesses who testify or submit evidence at or for the air-safety investigation can also be called to give testimony in the collateral investigation, or may even testify later at the trial.

It may be well to point out that there is precedent for legislation of the kind proposed here. As early as 1910, Congress recognized the importance to safety in railroads by amending the Interstate Commerce Act to prevent the use, as evidence in litigation, of reports of railroad-accident investigations (45 U. S. C. 41). Another statute similarly acts to protect accident reports of the Civil Aeronautics Board (49 U. S. C. 581).

This legislation was proposed by the Department of Defense. Its executive communication follows:

DEPARTMENT OF THE AIR FORCE,
OFFICE OF THE SECRETARY,
Washington, June 4, 1955.

Hon. SAM RAYBURN,

Speaker of the House of Representatives.

DEAR MR. SPEAKER: There is forwarded herewith a draft of legislation to prohibit in any lawsuit or action for damages the use and admission as evidence of investigations by the military departments of aircraft accidents conducted in the interest of air safety.

This proposal is a part of the Department of Defense legislative program for 1955, and the Bureau of the Budget has advised that there would be no objection to its transmittal to the Congress for consideration. The Department of the Air Force has been designated as the representative of the Department of Defense for this legislation. It is recommended that this proposal be enacted by the Congress.

PURPOSE OF THE LEGISLATION

The purpose of this legislative proposal is clearly set forth in its title.

In the interest of flying safety the Secretaries of the military departments have determined that it is necessary to conduct investigations of all aircraft accidents involving military aircraft. The regulations under which these investigations are conducted provide that the purpose of these investigations is to determine, in the interest of flying safety, all factors having a connection with the accident and to prevent a recurrence. It is specifically provided that the investigations are not designed to obtain evidence for disciplinary action of any sort or to determine pecuniary liability or line-of-duty status.

In these investigations every effort is made to persuade the individuals involved to make a full and accurate disclosure of all knowledge relevant to the inquiry which they may possess, even though disclosure of some of the information may be embarrassing to the individuals and involve self-incrimination. Such full and free disclosure is essential to the success of these investigations. In order to achieve this desired freedom of disclosure it is deemed essential that assurance be given that the statements made will not and cannot later be used in civil-court actions.

Enactment of this legislative proposal would preserve and insure the integrity of a record and report designed solely and exclusively for the purpose of futhering the interest of safety in air navigation. Exclusion of a record or report of such an investigation from introduction or admissibility as evidence in a civil lawsuit would not preclude the admission of testimony elicited for the purposes of the civil lawsuit from the same witnesses who testified for the purposes of the air-safety investigation. Nor would this legislative proposal prevent the calling up of experts and others whose testimony might be material to the adjudication of a civil suit even though they might have given testimony or offered opinions which for a part of a record or report of a military department aircraft accident investigation.

It is obvious that an individual will be extremely reluctant to admit his own negligence if he fears that his statements may later be used to his disadvantage. In addition certain other information pertinent to these investigations must be given in confidence and can be obtained only on a pledge not to disclose its source. For example, the vast knowledge of the technical representatives of the manufacturers whose products are involved in aircraft accidents if fully utilized by the Air Force in these investigations. These representatives could hardly be expected to find their companies at fault if their reports could later be made public to the prejudice of their employers and might even be used in actions against those employers. Furthermore, knowledge that the reports were subject to use in litigation might make the investigators themselves tend to soften their reports and hesitate to assess blame.

In some instances military-aircraft accidents result in civil suits for damages under the Tort Claims Act against the United States. The plaintiffs in such actions usually seek through discovery under rule 34 of the Federal Rules of Civil Procedures to obtain the aircraft-accident report made on the incident. If the United States, as a defendant, claims privilege and fails or refuses to comply with the order of the court to produce the report, the court may, if it does not recognize the privilege, preclude the United States from introducing any evidence with respect to the alleged negligence under rule 37 of the Federal Rules of Civil Procedures. Unless these reports are made

inadmissible, the United States will often find itself in a dilemma, thus necessitating either breaking faith with those who have supplied the information contained in the report or risk the possibility of an adverse judgment without a trial on the merits. The law is settled that aircraft-accident investigation reports involving military secrets are privileged reports, the disclosure of which in open court would jeopardize the national security. There is some doubt, however, as to whether the courts will recognize a claim of privilege in the case of accident reports when State secrets are not involved.

The legislation now being proposed would clarify the situation by making all military department aircraft accident reports resulting from investigations conducted in the interest of air safety not subject to discovery under rule 34, Federal Rules of Civil Procedure, and inadmissible in civil suits for damages. By so doing it would promote greatly the effective and successful investigation of aircraft accidents. The Congress, as early as 1910, provided for the shielding of accident investigation reports in the railroad field against use in litigation. (See 45 U. S. C. 41.) Similar action has been taken in the case of Civil Aeronautics Board reports. (See 52 Stat. 1013, as amended, 49 U. S. C. 581.) It is imperative that the flying-safety program includes the most unhampered accident investigations possible.

The Department of Defense firmly believes that enactment of this legislation will further the safety of air navigation without undue prejudice to the meritorious claims of parties suffering injury as the result of aircraft accidents.

COST AND BUDGET DATA

This proposal would cause no apparent increase in budgetary requirements for the Department of Defense.

Sincerely yours,

HAROLD E. TALBOTT.

○